



**COMMITTEE ON EDUCATION
AND THE WORKFORCE**

U. S. House of Representatives
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The Bush Administration's Final Anti-Overtime Rules Eliminate the Right to Overtime Pay for a Substantial Numbers of Hard Working Employees

The Truth about the Bush Administration's New Overtime Pay Rules

The Bush Administration claims that no worker making less than \$100,000 will lose overtime pay. Just like as in earlier versions of these anti-overtime rules, the Administration isn't telling the truth; eligibility for overtime pay for millions of hard-working employees are at risk. Just a preliminary review of the overtime regulations identifies the following groups of workers earning as little as \$23,660 a year who face the loss of overtime pay:

- **Team Leaders Loophole.** Allows employers to exempt employees now receiving overtime by making them 'team leaders' – even if they have no supervisory duties. MIT Professor of Management Thomas Kochan estimates that this provision alone could exempt between 1.5 and 2.3 million team leaders. Kochan adds: "To now penalize those employees who are willing to take on this critical role by stripping them of overtime protections will make it more difficult for employers to recruit team leaders slowing the pace of productivity and quality improvements in American industry."
- **Nursery and Pre-School Teachers.** Nursery and pre-school teachers generally have not been exempt from overtime pay because they do not exercise independent judgment. The final rule removes this requirement, so nursery school teachers—who are already significantly underpaid – will lose their right to overtime.
- **Financial Services Employees.** Most workers in the financial services industry would be exempt from overtime under sweeping new language that makes any employee

servicing, marketing or promoting the employer's financial products exempt from overtime pay. Only such employees engaged in primarily direct sales of financial products would be entitled to overtime pay.

- **Delivery Drivers and Service Technicians.** Customer service representatives, copier services, and computer repair employees can be exempted from overtime by deeming their primary duty to be the sales of products rather than the servicing or maintenance of equipment. In the past workers could only be exempt if the primary purpose or 20% of their time was outside sales. The new regulations repeal these requirements, and permit employers to exempt them from overtime without regard to the amount of time they spend on sales.
- **Working Foreman.** Under the old rules, working foreman (employees who hold dual jobs in managing and front line work) were always non-exempt employees, and thus entitled to overtime. The new regulations repeal the working foreman language and deny employees performing dual work the right to overtime pay. Examples of such workers include head tellers or warehouse managers.
- **Journalists.** Except in rare cases, journalist have always been entitled to overtime pay. Only "artistic", "creative" or "highly technical writers" were exempted. Under the new rules, almost all journalists will be exempt if they, for example, "analyze or interpret public events."
- **Computer Employees.** Vastly expands the exemption for computer occupations. The new rule automatically exempts all computer systems analysts, computer programmers, software engineers, or similar skilled workers. Current law required the employer to show the employee had "highly specialized knowledge," in order for the employee to become exempt.
- **Funeral Directors and Embalmers.** Under the old rules, such employees were not generally considered professional and thus would receive overtime pay. Under the new rules such employees are presumed to be professionals and thus exempt from overtime.
- **Chefs.** Under the old rules, only chefs that had management responsibilities were exempt. Under the new rules chefs are presumed to be professionals if their work requires "invention, imagination, originality or talent" (even if they don't have 4 year degrees).
- **Hourly Workers Such as RNs.** Non-salary, hourly workers have always been entitled to overtime pay. Most registered nurses (RNs), who would be exempt from overtime if they were paid on a salary basis (because of their professional status), currently receive overtime pay now because they are paid hourly, not on a salary basis. The old regulations absolutely prohibited employees to deny overtime pay to employees working on an hourly basis. For the first time, the new regulations specifically permit hourly workers to be exempted from overtime so long as they are paid a minimum of \$455 a week, and their final wages have some relationship to their minimum salary. This change is very significant for RNs because it would permit employers to deny them overtime pay even though they are paid on an hourly basis.